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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/155,635	07/09/1999	HIDEHARU SATO	48699	8942

7590

01/03/2002

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EXAMINER

CHANEY, CAROL DIANE

ART UNIT

PAPER NUMBER

1745

DATE MAILED: 01/03/2002

67

Please find below and/or attached an Office communication concerning this application or proceeding.

MF-19

**Office Action Summary**

Application No.

09/155,635

Applicant(s)

GATO ET AL.

Examiner

Carol Chaney

Art Unit

1745

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 November 2001.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1,3,9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,3,9 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

***Continued Prosecution Application***

The request filed on 11-30-01 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/155,635 is acceptable and a CPA has been established. An action on the CPA follows. Claims 1, 3, 9 and 10 are pending in the application. Because no preliminary amendments have been filed with the request filed on 11-30-01, the rejection in the office action mailed 7-31-01 is maintained. The rejection is repeated below:

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Omaru et al. (US Patent 5,561,005) with evidence shown by Omaru et al. in US Patent 5,639,575 and Fauteux in US Patent 5,512,392, for reasons of record.

Omaru et al. disclose a secondary lithium battery having a graphitic anode formed from "LONZA KS 75" graphite. The graphite has a particle size of 28.4 microns, and a Raman spectrum "G value" of 8.82. (Note Omaru et al., US Patent 5,561,005, column 15, lines 50-60.) LONZA KS 75 graphite will have a surface area of less than about 7.65 m<sup>2</sup>/g, as evidenced by Fauteux in US Patent 5,512,392. (Note column 3, Table 1.)

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***Response to Arguments***

Applicant's arguments filed 5-6-01 have been fully considered but they are not persuasive.

Applicants assert the patentable distinction between their inventive carbons, and prior art commercially-available carbons is in the relation between surface area (y) and particle size (x) of the carbons. For both the prior art the instant invention, the relation is given by an equation of the general form:

$$y = Kx^{-0.62}$$

where K is a constant. In applicants' invention, carbons such that  $y \leq 42x^{-0.62}$  are claimed, whereas for the commercially available Lonza graphites, a best fit of the available data gives the equation  $y = 52x^{-0.62}$ . The significance of the difference between a constant of 42 and a constant of 52 in this context remains unclear. In reference to Dr. Sato's declaration filed 1-4-01, the correspondence in the Figure provided between the data points represented by solid dots labeled "Examples" and the examples provided in the specification in Table 2 is not clear. Applicants' data from Examples 1-9 of Table 2 in the specification, data from the series of Lonza graphites, and the equations  $y = 42x^{-0.62}$  and  $y = 52x^{-0.62}$  are plotted. It appears that the scatter in the experimental data is greater than the differences between the equations  $y = 42x^{-0.62}$  and  $y = 52x^{-0.62}$ .

***Conclusion***

4. This is a continuation of applicant's earlier Application No. 09/155,635. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carol Chaney whose telephone number is (703) 305-3777. The examiner can normally be reached on Monday-Friday from 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gabrielle Brouillette, may be reached at the telephone number (703) 308-

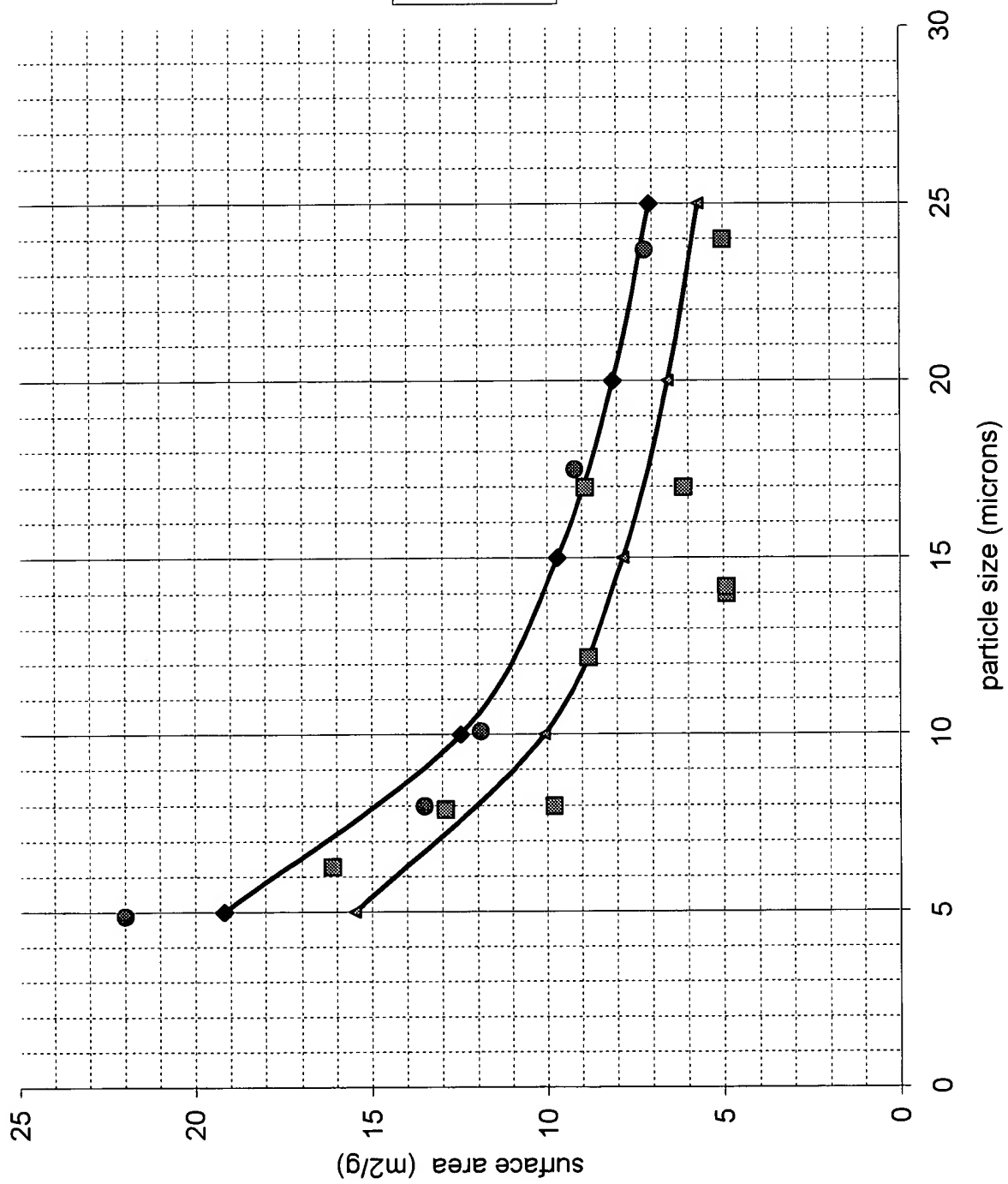
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0756. The official fax number for the organization where this application or proceeding is assigned is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Carol Chaney  
Primary Examiner  
Art Unit 1745  
December 31, 2001



—●—  $y = 52 x^{-0.62}$   
■ applicants' examples  
—▲—  $y = 42 x^{-0.62}$   
● Lonza Graphites